

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9 BILLY RUIZ,

10 Petitioner,

11 v.

12 W.L. MOTGOMERY,

13 Respondent.
14 _____

) Case No. SA CV 13-1641 BRO (JCG)

) **ORDER ACCEPTING REPORT AND**
) **RECOMMENDATION OF UNITED**
) **STATES MAGISTRATE JUDGE AND**
) **DENYING CERTIFICATE OF**
) **APPEALABILITY AND**
) **EVIDENTIARY HEARING**

15
16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended
17 Petition (“FAP”), the Magistrate Judge’s Report and Recommendation, Petitioner’s
18 Objections to the Report and Recommendation, and the remaining record, and has
19 made a *de novo* determination.

20 Petitioner’s Objections reiterate the arguments made in the FAP and Reply,
21 and lack merit for the reasons set forth in the Report and Recommendation.

22 Accordingly, IT IS ORDERED THAT:

- 23 1. The Report and Recommendation is approved and accepted^{1/};
24 2. Judgment be entered denying the FAP and dismissing this action with
25 prejudice; and
26 _____

27 ^{1/} The Court also construes the Magistrate Judge’s December 20, 2013 minute
28 order granting in part Petitioner’s stay request as a Report and Recommendation, and
adopts it.

1 3. The Clerk serve copies of this Order on the parties.

2 Additionally, for the reasons set forth in the Report and Recommendation, the
3 Court finds that Petitioner has not made a substantial showing of the denial of a
4 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
5 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
6 appealability.

7 Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
8 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court-
9 decision at the time it was made. It follows that the record under review is limited to
10 the record in existence at that same time *i.e.*, the record before the state court.”).

11
12 DATED: August 7, 2015

A handwritten signature in black ink, appearing to read "Beverly Reid O'Connell", written over a horizontal line.

13
14
15 HON. BEVERLY REID O'CONNELL
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28